

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FAIR ISAAC CORPORATION,

Court File No. 16-cv-1054 (WMW/DTS)

Plaintiff,

v.

FEDERAL INSURANCE COMPANY,
an Indiana corporation, and ACE
AMERICAN INSURANCE COMPANY,
a Pennsylvania corporation,

**DECLARATION OF
TERRENCE J. FLEMING IN
SUPPORT OF DEFENDANTS'
MOTION TO EXCLUDE EXPERT
REPORT AND TESTIMONY OF
RANDOLPH BICKLEY WHITENER**

Defendants.

I, Terrence J. Fleming, declare as follows:

1. I am an attorney at Fredrikson & Byron, P.A. and am one of the attorneys representing Defendants Federal Insurance Company and ACE American Insurance Company (collectively referred to herein as “Federal”) in this case.

2. Based on searching documents that Plaintiff and Defendants have produced in discovery while attempting to filter out any documents that reference other individuals with the last name Sullivan, it appears that the Parties have produced 1,426 documents that either mention or directly involve Patrick Sullivan.

3. Federal sought to obtain Patrick Sullivan’s Declaration (Dkt. 516) because Plaintiff Fair Isaac Corporation (“FICO”) brought up a new distinction in its Summary Judgment Motion (Dkt. 398), arguing that the License Agreement at the center of this dispute contains a material distinction between use and installation rights for the Blaze Advisor software.

4. Attached hereto as **Exhibit 1** is a true and correct copy of emails between counsel for the Parties regarding a potential meet-and-confer for FICO's Motion to Strike (Dkt. 553).

5. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the transcript of the February 26, 2019 deposition of Lawrence Wachs.

6. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the transcript of the July 31, 2018 deposition of Henry Mirolyuz.

7. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from the transcript of the January 11, 2019 deposition of Henry Mirolyuz.

8. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts from the transcript of the November 13, 2018 deposition of Ramesh Pandey.

9. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts from the transcript of the January 18, 2019 deposition of Tamra Pawloski.

10. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the transcript of the March 22, 2019 deposition of Thomas Carretta.

11. Attached hereto as **Exhibit 8** is a true and correct copy of Federal's Second Supplemental Answers to Interrogatory Nos. 2, 3, and 4.

12. Attached hereto as **Exhibit 9** is a true and correct copy of a June 28, 2017 letter from Allen Hinderaker to Lora Friedemann.

13. Attached hereto as **Exhibit 10** is a true and correct copy of an email exchange between Ewen Setti and Patrick Sullivan dated September 12, 2007.

14. Attached hereto as **Exhibit 11** is a true and correct copy of Deposition Exhibit 394 from this litigation.

15. Attached hereto as **Exhibit 12** is a true and correct copy of Deposition Exhibit 395 from this litigation.

16. Attached hereto as **Exhibit 13** is a true and correct copy of Deposition Exhibit 397 from this litigation.

17. Attached hereto as **Exhibit 14** is a true and correct copy of Deposition Exhibit 398 from this litigation.

18. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from a hearing held on May 8, 2019 in this matter.

19. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from a hearing held on August 22, 2019 in this matter.

20. Attached hereto as **Exhibit 17** is a true and correct copy of the transcript from a telephone conference involving Magistrate Schultz and counsel for both Parties on August 26, 2019.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: September 16, 2019

s/ Terrence J. Fleming